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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,567	02/28/2002	Donald E. Weder	8403.522	5406

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/090,567

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

Art Unit

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MW

-- The MAILING DATE of this c mmunicati n appears on the cover sheet with th corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) ☒ Claim(s) 1-10,12-24,31-33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-24,31-33,35 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Priority

Upon reconsideration, Examiner agrees with Applicant that the priority of the instant application extends back to 3 May 1994, the filing date of US 5,625,979.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 10, 21, 23, 31, and 33 are rejected under 35 U.S.C. §102(b) as being anticipated by Weder et al. (EP 0529306 A1).

As to Claims 1 and 31, Weder et al. disclose a preformed sleeve for covering a pot (Fig. 1) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (Fig. 1) and closed lower end (12 and 34 of Fig. 1), and having a tapered shape (Fig. 1); a skirt portion (14 of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (28a-f of Fig. 1) in the base, and wherein the preformed sleeve is initially constructed to have a flattened condition (implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less permanent shape or flattened shape), and the preformed sleeve having a tubular shape in the flattened condition (implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less

permanent shape or flattened shape), and having an inner retaining space when opened from the flattened condition (Fig. 1) and wherein when the pot is disposed within the inner retaining space of the preformed sleeve, the expandable folds in the base portion expand (Fig. 1) to cause the base portion to cover and surround the outer peripheral surface of the pot.

As to Claims 3-5, Weder et al. further disclose the material thickness from about 0.1 mil to 30 mils (col. 5 line 20).

As to Claim 6, Weder et al. further disclose the material a polymeric film (col. 5 lines 22-24).

As to Claims 7 and 33, Weder et al. further disclose z-shape pleats (col. 3 lines 45-55).

As to Claim 8, Weder et al. further disclose a portion for serving as a support device (defined as any region of skirt in Fig. 1).

As to Claim 10, Weder et al. further disclose the folds being continuous between the base and skirt (Fig. 1).

As to Claims 21 and 35, Weder et al. disclose a preformed sleeve for covering a pot (Fig. 1) having an upper end, lower end, and outer peripheral surface comprising a base portion having an upper end (Fig. 1) and closed lower end (12 and 34 of Fig. 1), and having a tapered shape (Fig. 1); a skirt portion (14 of Fig. 1) extending from the upper end of the base; and a plurality of unconnected, vertically oriented, accordion-like, expandable folds (28a-f of Fig. 1) in the base, and wherein the preformed sleeve is initially constructed to have a flattened condition (implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less permanent shape or flattened shape), and the preformed sleeve having a tubular shape in the flattened condition

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(implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less permanent shape or flattened shape), and having an inner retaining space when opened from the flattened condition (Fig. 1) and wherein when the pot is disposed within the inner retaining space of the preformed sleeve, the expandable folds in the base portion expand (Fig. 1) to cause the base portion to cover and surround the outer peripheral surface of the pot. The sleeve of Weder et al. inherently performs the method steps recited in claims 21 and/or 35.

As to Claim 23, Weder et al. as modified by Newport further disclose the folds being continuous between the base and skirt (Fig. 1).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 12-17, 19, 20, 22, 24, 32, and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (EP 0529306 A1) in view of Newport (AU 42319/78; document FP on Applicant's 1449).

As to Claims 2 and 32, the limitations of Claims 1 and 31 are disclosed as described above. Not disclosed is the upper portion extending from the skirt portion and detachable therefrom via a detaching element. Newport, however, discloses an upper portion (generally around 11 of Fig. 2) extending from the skirt portion (sleeve portion around leadline of 13 in Fig. 2) and detachable therefrom via a detaching element (10 of Figs. 1 and 2). It would have been

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obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding a detachable upper portion via detaching element as disclosed by Newport so as to more clearly display the potted plant (see Newport at page 3 lines 31-35).

As to Claim 12, Weder et al. disclose a preformed sleeve for covering a pot (Fig. 1) having an upper end, lower end, and outer peripheral surface comprising a lower portion having an upper end (Fig. 1) and lower end with a bottom (12 and 34 of Fig. 1), and the lower having a tapered shape (Fig. 1); an upper portion (14 of Fig. 1) extending from the lower portion; and a plurality of substantially unconnected, vertically oriented expandable folds (28a-f of Fig. 1) in the lower portion, and wherein the preformed sleeve is initially constructed to have a flattened condition (implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less permanent shape or flattened shape), and the preformed sleeve having a tubular shape in the flattened condition (implicit from col. 11 lines 36-39 since a sleeve without self-adhesive would have a less permanent shape or flattened shape), and having an inner retaining space when opened from the flattened condition (Fig. 1) and wherein when the pot is disposed within the inner retaining space of the preformed sleeve, the expandable folds in the lower portion expand (Fig. 1) to cause the base portion to cover and surround the outer peripheral surface of the pot. Not disclosed is an upper portion extending from the lower portion and detachable therefrom by a detaching element. Newport, however, discloses an upper portion (generally around 11 of Fig. 2) extending from the lower portion (sleeve portion around leadline of 13 in Fig. 2) and detachable therefrom via a detaching element (10 of Figs. 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al.

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by adding a detachable upper portion via detaching element as disclosed by Newport so as to more clearly display the potted plant (see Newport at page 3 lines 31-35).

As to Claim 13, Weder et al. as modified by Newport further disclose the upper portion sized to substantially surround and enclose the floral grouping (Fig. 2 of Newport).

As to Claims 14, Weder et al. as modified by Newport further disclose the material thickness from about 0.1 mil to 30 mils (col. 5 line 20).

As to Claim 15, Weder et al. as modified by Newport further disclose the material a polymeric film (col. 5 lines 22-24).

As to Claim 16, Weder et al. as modified by Newport further disclose z-shape pleats (col. 3 lines 45-55).

As to Claim 17, Weder et al. as modified by Newport further disclose a portion for serving as a support device (defined as any region of skirt in Fig. 1).

As to Claim 19, Weder et al. as modified by Newport further disclose the folds being continuous between the base and skirt (Fig. 1).

As to Claim 20, Weder et al. as modified by Newport further disclose the lower end of the lower portion as closed (Fig. 1 of Weder et al.).

As to Claims 22 and 36, the limitations of Claims 21 and 35 are disclosed as described above. Not disclosed is the upper portion extending from the skirt portion and detachable therefrom via a detaching element. Newport, however, discloses an upper portion (generally around 11 of Fig. 2) extending from the skirt portion (sleeve portion around leadline of 13 in Fig. 2) and detachable therefrom via a detaching element (10 of Figs. 1 and 2). It would have been

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obvious to one of ordinary skill in the art at the time of the invention to modify the method of Weder et al. by adding a detachable upper portion via detaching element as disclosed by Newport so as to more clearly display the potted plant (see Newport at page 3 lines 31-35).

As to Claim 24, Weder et al. as modified by Newport further disclose the upper portion sized to substantially surround and enclose a floral grouping (Fig. 2 of Newport).

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (EP 0529306 A1) in view of Takubo (JP3-151915).

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve with a drain hole. Takubo, however, discloses a pot cover with a drain hole (11 of 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. by adding a drain hole as disclosed by Takubo so as allow drainage of excess water so that the plant would experience less disease pressure.

Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (EP 0529306 A1) in view of Newport (AU 42319/78; document FP on Applicant's 1449) in further view of Takubo (JP3-151915).

As to Claim 18, the limitations of Claim 12 are disclosed as described above. Not disclosed is the lower portion with a drainage hole. Takubo, however, discloses a pot cover with a drain hole (11 of 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Weder et al., as modified by Newport, by adding

a drain hole as disclosed by Takubo so as allow drainage of excess water so that the plant would experience less disease pressure.

Response to Arguments

Applicant's arguments with respect to claims 1-10, 12-24, 31-33, 35, and 36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP5-132089 disclose in the prior art a sleeve with pleats.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jeffrey L. Gellner